National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

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International Longshoremen's Association, AFL-CIO; International Longshoremen's Association, Local 1359-1860, AFL-CIO (Canaveral Port Authority and Port Canaveral Stevedoring, Limited), Cases 12-CC-1227-1 and 12-CC-1227-2

220-5000, 220-7501, 220-7517, 560-2550-1700, 560-2550-5000, 560-2575-3300

This case is a companion to Int'l Longshoremen's Ass'n, et al. (Coastal Stevedoring Co.), Case 12-CC-1226, the subject of an Advice Memorandum dated May 22, 1991. In that case, we authorized complaint alleging that the Union violated Section 8(b)(4)(ii)(B) when, by inducing members of a Japanese stevedoring union to threaten to refuse to unload in Japan goods that had been handled in the United States by a stevedoring company with which the Union has a primary dispute, and by causing the threats to be communicated, directly and indirectly, to various neutral entities in Japan and the United States, the Union caused neutral entities to cease or alter business relationships in the United States.(1)

We concluded that the evidence supports issuance of a complaint in the instant case as well.

FACTS

Charging Party Port Canaveral Stevedoring, Limited (Canaveral) performs stevedoring services in Florida at the port of Port Canaveral, which is operated by Charging Party Canaveral Port Authority (CPA). CPA is a state port authority which leases space to a variety of companies, including Canaveral. (2) Under the terms of the lease agreement, Canaveral pays CPA a basic fee for the use of its port facilities and an additional "tariff" or "royalty" for each ship loaded at the port. CPA also leases space to Mid-Florida Freezer Warehouses, Ltd. (Mid-Florida), a warehousing concern that is affiliated with Canaveral.(3) While Mid-Florida apparently prefers to do business with Canaveral, whose employees are unrepresented, it has also used unionized stevedoring concern(s) at Port Canaveral from time to time when a customer has requested that its goods be loaded by ILA labor. (4)

Prior to the events at issue herein, Canaveral, like Coastal, derived most of its income from contracts to load shipments of Florida grapefruit for export to Japan during the November to May citrus season. As in Case 12-CC-1226, these shipments resulted from export-import agreements between various American grower-exporters(5) and various Japanese fruit importers, such as Royal Co., Ltd., and/or importer groups, such as Japan Produce Company, Ltd. (Japan Produce).(6) Grapefruit are transported to Port Canaveral and stored at Mid-Florida's facility prior to the arrival of ships for loading.(7) In prior grapefruit seasons, Mid-Florida and/or the Japanese importers have contracted with Canaveral for stevedoring services.(8) The Japan-bound grapefruit are loaded onto ships operated by various shipping companies, including Kyokuyo, a Japanese steamship line, pursuant to shipping contracts arranged on a group basis by consortiums of Japanese importers, including consortiums known as the "B/C" group and the "A" group. (9) Once loaded by Canaveral, the grapefruit are transported to Japan, where the shipments are unloaded by employees of Japanese stevedoring companies. The grapefruit are then received by the Japanese importers.

In previous grapefruit seasons, approximately ten ships have been scheduled and loaded at Port Canaveral with grapefruit destined for members of the B/C or A groups. By contrast, no grapefruit shipments from Port Canaveral to Japan were scheduled for the 1990-91 season.

The absence of grapefruit export business at Port Canaveral in the 1990-91 season occurred in the context of the same series of written communications concerning the Union's dispute over the use of non-ILA labor analyzed in the May 22 Advice Memorandum. These documents, together with certain other testimony and documents provided in conjunction with the instant charges provide the evidentiary basis for establishing that the Union has also violated the Act in the instant cases.

ACTION

We conclude that complaint should issue, absent settlement, alleging that the Union's conduct violated Section 8(b)(4)(ii)(B) consistent with the analysis set forth in the Advice Memorandum dated May 22, 1991 in Case 12-CC-1226.

In the May 22 memorandum, we concluded that the Union violated Section 8(b)(4)(ii)(B) when it elicited the assistance of the National Council of Dockworker's Unions of Japan (the Dockworkers) in inducing Japanese stevedores to engage in a work stoppage if called on to unload citrus fruit loaded in Florida by Coastal, with whom the Union has a primary dispute, and when it further requested and caused to be disseminated to neutral entities the Japanese union's intentions to accede to such Union requests, where the evidence shows it acted for the prohibited object of causing such neutrals to alter their established business relationships and modes of operation in the United States. The theory of violation applies equally herein.

Thus, the October 4 letter, by which the Union set in motion its secondary "scheme" to cause the Japanese union to threaten a work stoppage, and its November 6 letter thanking the Japanese union for its efforts, expressly refer to the Union's dispute over the use of non-ILA labor at Port Canaveral as well as Fort Pierce.[(10)] In addition, although App. B; Ex. 9, the memorandum dated October 29, 1990 addressed to "All officials, managers, union chairmen, and local harbor chairmen," which shows the Dockworkers' acquiescence in the Union's scheme,[(11)] does not mention Port Canaveral per se, it does refer to the receipt of the Union's October 4 request, which itself seeks the Dockworkers' cooperation at both Port Canaveral and Fort Pierce.

Similarly, several documents discussed in the May 22 memorandum as showing the communication of the threat to neutrals refer to Port Canaveral. Specifically, the October 19, 1990 memorandum from the Dockworkers to the importers' trade association, Nisseikyo, the October 22, 1990 memoranda to "shipping companies" and "importers,"[(12)] the October30, 1990 telex from Nissui Shipping to Coastal, the November6, 1990 memorandum from Japan Reefer Carrier to Coastal, and the October29, 1990 memorandum from Dockworkers' president Kamezaki to various Japanese union officials all refer expressly to Port Canaveral. Moreover, although the April 10, 1990 memorandum from the President and Vice-President of the "Japan Labor Union Association" to the "Shipping Companies" (App. B.; Ex. 1) does not expressly refer to Canaveral, it is reasonable to infer that the references therein to "the East Coast of the U.S.A." include Port Canaveral and that the exhibit communicates an intent to engage in a boycott that threatens economic harm to neutral entities at Port Canaveral. Thus, the October 22 memoranda (App. B; Exs. 5 and 6) specifically refer to and paraphrase the April 10 document before suggesting that "to avoid trouble" at, inter alia, Port Canaveral, the addressees should direct "those concerned" to use ILA stevedoring companies.

In addition, there is evidence that the Japanese stevedores' threats to refuse to handle produce loaded by Coastal and Canaveral were communicated to neutrals who did business with Canaveral, or with other neutrals who did business with Canaveral, in the past, and that the business relations among these entities and with Canaveral were disrupted as a result of the Union's threats. Thus, the December 10, 1990 datafax from Japan Produce to Mid-Florida states that "A-Group decided to send [our first boat] to Tampa, because our members were concerned about union problem." Given the timing of the Japan Produce datafax in conjunction with the other evidence of the Union's scheme, it is reasonable to infer that the "union problem" referred to is the likelihood that grapefruit would not be unloaded in Japan if loaded with non-ILA labor at, inter alia, Port Canaveral.[(13)] Accordingly, this exhibit can be relied upon to demonstrate that Japan Produce, a neutral to the Union's dispute with Canaveral, was the object of (ii) pressure in connection with the primary dispute being brought to bear upon neutrals, and, hence, can be relied upon as evidence of (ii) conduct.[(14)] Similarly, the February 19, 1991 datafax message from Kyokuyo to Mid-Florida can also be relied upon to show that "Canaveral neutrals" were restrained and coerced by the Union's (ii) message. Thus, the shipping company specifically asks Lee to advise it of the status "of the deliberation" concerning the Dockworkers' announcement that "by strongly requested (sic) from ILA that they may refuse to discharging (sic) work at Japan if load Pt. Canaveral/Ft Pierce because (sic) such ports to be used (sic) non-union labors (sic)."[(15)] We would not, however, rely on the December 29, 1990 datafax message to Mid-Florida from a third neutral, Royal Co., as evidence of the Union's secondary disruption of business relationships at Port Canaveral. Thus, while Royal does inquire about the "non-union matter," the document cannot fairly be construed as evidence that Royal had not shipped through Port Canaveral in the 1990-91 season because of secondary pressure from the Union inasmuch as the message offers other explanations for its decision to do business in Tampa that are wholly unrelated to union considerations.

Thus, as with Coastal, the Union could reasonably foresee that neutrals doing business with Canaveral, such as the importer

group Japan Produce and the shipping company Kyokuyo, would be coerced into altering their modes of doing business in order to avoid the threatened harm.(16) Accordingly, even absent an exact analog to the actual diversion of the El Triunfo in Case 12-CC-1226, there is sufficient evidence to establish all of the elements of the prima facie theory of violation with respect to the Union's conduct regarding the "Canaveral neutrals." In addition, Mid-Florida is willing to cooperate with the Region and will provide witnesses and documentary evidence to bolster the inference that the non-booking of Japan-bound grapefruit shipments at Port Canaveral is attributable to the ILA's secondary conduct. Thus, [*FOIA Exemptions 6, 7(c) and (d)*] will [*FOIA Exemptions 6, 7(c) and (d)*] be able to introduce corporate records showing the level of Mid-Florida and/or Canaveral's Florida grapefruit export business in prior seasons.(17)

Based upon the foregoing evidentiary analysis, we conclude that a Section 8(b)(4)(ii)(B) complaint should issue, absent settlement, based upon the theory of violation developed in the May 22, 1991 Advice Memorandum.

R.E.A.

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[1] In this regard, authorization of a Section 8(b)(4)(i) complaint in the May 22 memorandum should be disregarded. Although the conduct of inducing a work stoppage should be alleged as part of the (ii) scheme to threaten neutrals doing business in the United States, with the object of forcing a cessation of business among those neutrals and between the neutrals and the primary, the inducement, itself, was confined to Japanese employees of Japanese stevedoring companies in Japan. Accordingly, we conclude that the territorial limitations on the Board's jurisdiction, discussed at pp. 4-8 of the May 22 memorandum, preclude attacking the inducement as a (i) violation.

[2] Canaveral and CPA are not affiliated companies and there has been no contention that the two companies are not separate persons for Section 8(b)(4) purposes.

[3] The Region apparently has not determined whether Mid-Florida is neutral to Canaveral's dispute with the Union.

[4] There is no evidence that the Union has attempted to organize Canaveral's unrepresented employees within the instant 10(b) period.

[5] The identities of the exporters involved in grapefruit shipments through Port Canaveral are unknown.

[6] In this regard, it is not entirely clear whether the import-export agreements and the other contractual arrangements described infra, e.g., those with Canaveral and/or Mid-Florida, typically are negotiated on an individual basis by each Japanese importer, on a coordinated basis by several importers acting as a group, or both.

[7] Apparently, the import-export agreements with the individual importers and/or importer groups specify delivery to Mid-Florida, while the actual warehousing of the fruit is governed by separate agreements between the importers and Mid-Florida.

[8] The precise identity of the parties to contracts governing Canaveral's work at the port is unclear.

[9] The A group importers include the various importer-members of Japan Produce. Royal Company apparently does not belong to either importer consortium, but leases available space for its grapefruit on ships chartered by them.

[10] The fact that the November 6 letter erroneously states that the El Triunfo was diverted from Port Canaveral lends further support to a finding that the Union's scheme was directed at Port Canaveral.

[11] See discussion in the May 22 memorandum at p. 15.

[12] The October 19 and 22 memoranda are obviously relevant to show that the Union's scheme to create a threat of economic harm and its cease doing business objective encompassed work done by Canaveral as well as Coastal. Their probative value in showing that "Canaveral neutrals" were actually coerced is limited to the extent that we can show that that the members of the associations addressed have done business at Port Canaveral in the past.

[13] Any evidence that Japan Produce or other neutrals doing business at Port Canaveral received any of the Union's memoranda to "shippers" or "importers" (e.g., App. B.; Exs.1, 5 or 6) would strengthen the inference.

[14] This document can be authenticated by Mid-Florida official Patrick Lee, who received it in response to his letter dated November 6, 1990. No admissibility problems are anticipated, as the message would not be introduced to prove the truth of the statement that the A group sent a ship to Tampa, or to prove the basis for the decision, but rather to show that the Union's (ii) "message" was communicated to Japan Produce members. Even though we cannot show that the (ii) message was communicated directly to Japan Produce by the Union or its agents, it is nevertheless attributable to the Union. The Union's entire course of conduct was designed to make it likely that the threat of "union trouble" would be communicated to neutrals who would, in turn, adjust their business relationships in order to avoid the effects of such "trouble." See International Longshoremen's Association (Kansas Farm Bureau), 264 NLRB 404, 405, 408 (1982), enfd. 723 F.2d 963, 115 LRRM 2093 (D.C. Cir. 1983) (communication of the union's strike threat by one neutral to several other neutrals was deemed (ii) coercion against all neutrals despite the absence of direct union communication to each neutral).

[15] For the reasons discussed in the previous footnote, we anticipate no authentication or admissibility problems with this document.

[16] It also seems likely that the neutral Charging Party CPA, which does business with Canaveral, could provide evidence or testimony that it received notice of the threatened work stoppage and was thereby coerced.

[17] In this regard, we note that while the December 10, 1990 Japan Produce datafax and the February 19, 1991 Kyokuyo message arguably provide direct evidence that the Union's (ii) conduct was effective, relying on these documents for this purpose would present a substantial hearsay problem. Thus, the documents would have to be offered for the truth of their statements that business had either been diverted from Port Canaveral to Tampa (Japan Produce) or that business might be returned in the future if ILA labor could be provided (Japan Produce and Kyokuyo). However, because the prima facie case does not require a showing that the Union's conduct actually caused a cessation of business but only that such cessation was foreseeable, it is unnecessary to resolve the hearsay issue. [*FOIA Exemption 5*.]